

1 BRIAN BOYNTON
2 Acting Assistant Attorney General
3 WILLIAM C. PEACHEY
4 Director
5 Office of Immigration Litigation
6 WILLIAM C. SILVIS
7 Assistant Director
8 Office of Immigration Litigation
9 SARAH B. FABIAN
10 Senior Litigation Counsel
11 NICOLE N. MURLEY
12 Senior Litigation Counsel
13 Office of Immigration Litigation
14 U.S. Department of Justice
15 Box 868, Ben Franklin Station
16 Washington, D.C. 20044
17 Telephone: (202) 532-4824
18 Fax: (202) 616-8962
19 ADAM L. BRAVERMAN
20 United States Attorney
21 SAMUEL W. BETTWY
22 Assistant U.S. Attorney
23 California Bar No. 94918
24 Office of the U.S. Attorney
25 880 Front Street, Room 6293
26 San Diego, CA 92101-8893
27 619-546-7125
28 619-546-7751 (fax)

*Attorneys for Federal Respondents-
Defendants*

Lee Gelernt*
Judy Rabinovitz*
Anand Balakrishnan*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad St., 18th Floor
New York, NY 10004
T: (212) 549-2660
F: (212) 549-2654
lgelernt@aclu.org
jrabinovitz@aclu.org
abalakrishnan@aclu.org

Bardis Vakili (SBN 247783)
ACLU FOUNDATION OF
SAN DIEGO & IMPERIAL
COUNTIES
P.O. Box 87131
San Diego, CA 92138-7131
T: (619) 398-4485
F: (619) 232-0036
bvakili@aclusandiego.org

Stephen B. Kang (SBN 292280)
Spencer E. Amdur (SBN 320069)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-1198
F: (415) 395-0950
skang@aclu.org
samdur@aclu.org

*Attorneys for Petitioners-
Plaintiffs*
**Admitted Pro Hac Vice*

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 MS. L, et al.,

Case No. 18cv428 DMS MDD

4
5 Petitioners-Plaintiffs,

JOINT STATUS REPORT

6 vs.

7 U.S. IMMIGRATION AND CUSTOMS
8 ENFORCEMENT, et al.,

9 Respondents-Defendants.
10

11
12 The Court ordered the parties to file a joint status report (JSR) by 3:00 pm on
13 February 24, 2021, in anticipation of the status conference scheduled at 1:30 pm on
14 February 26, 2021. The parties submit this joint status report in accordance with the
15 Court's instruction.
16

17 ///

18
19 ///

20
21 ///
22
23
24
25
26
27
28

1 **I. DEFENDANTS' POSITIONS**

2 **A. Update Regarding Government's Implementation of Settlement**
 3 **Agreement**

4

5 SETTLEMENT	6 DESCRIPTION	7 NUMBER
8 Election Forms¹	Total number of executed election forms received by the Government	444 (260 Parents/184 Children)²
	<ul style="list-style-type: none"> 9 • Number who elect to receive settlement procedures 	282 (157 Parents/125 Children)
	<ul style="list-style-type: none"> 10 • Number who waive settlement procedures 	162 (103 Parents/59 Children)³
Interviews	Total number of class members who received interviews	176⁴
	<ul style="list-style-type: none"> 14 • Parents who received interviews 	92
	<ul style="list-style-type: none"> 15 • Children who received interviews 	84

16
17
18
19

20 ¹ The number of election forms reported here is the number received by the Government as of
 21 February 23, 2021.

22 ² The number of children's election forms is lower than the number of parent election forms
 23 because in many instances a parent electing settlement procedures submitted an election form on
 his or her own behalf or opposing counsel e-mailed requesting settlement implementation for the
 entire family, but no separate form was submitted on behalf of the child.

24 ³ The number of children's waivers is lower because some parents have submitted waivers only
 25 for themselves and some parents who have waived reunification also waived settlement procedures
 and have therefore not provided a form for the child.

26 ⁴ Some individuals could not be interviewed because of rare languages; these individuals were
 27 placed in Section 240 proceedings. This number includes credible fear and reasonable fear
 28 interviews, as well as affirmative asylum interviews.

1	Decisions	Total number of CFI/RFI decisions issued for parents by USCIS	72 ⁵
2			
3		<ul style="list-style-type: none"> Number of parents determined to establish CF or RF upon review by USCIS 	70 ⁶
4			
5			
6		<ul style="list-style-type: none"> Number of parents whose CF or RF finding remains negative upon review by USCIS 	2
7			
8			
9			
10		Total number of CFI decisions issued for children by USCIS	73 ⁷
11			
12		<ul style="list-style-type: none"> Number of children determined to establish CF by USCIS 	73 ⁸
13			
14			
15		<ul style="list-style-type: none"> Number of children determined not to establish CF by USCIS 	0
16			
17			
18			

⁵ This number is the aggregate of the number of parents whose negative CFI/RFI determinations were reconsidered, number of parents whose negative CFI/RFI determination was unchanged, and individuals who were referred to 240 proceedings without interview because of a rare language. This number excludes 12 cases where a parent already had an NTA from ICE or was already ordered removed by an IJ (which are included in the interview totals).

⁶ This number includes parents who received positive CF/RF determinations upon reconsideration, parents who received a Notice to Appear based on their child's positive CF determination, and parents who were placed in Section 240 proceedings due to a rare language.

⁷ This number is the aggregate of the number of children who received a positive CF determination, the number of children who received a negative CF determination, and children who were referred to 240 proceedings without interview because of a rare language.

⁸ This number includes children who received a positive CF determination, children who received a Notice to Appear as a dependent on their parent's positive CF determination, and children who were placed in Section 240 proceedings due to a rare language.

1		Total number of affirmative asylum decisions by USCIS	24
2			
3		• Number of parents granted asylum by USCIS	3
4			
5		• Number of parents referred to immigration court	5
6			
7		• Number of children granted asylum by USCIS	4 ⁹
8			
9		• Number of children referred/returned to immigration court	12
10			
11			
12			
13	Removals	Number of class members who have been returned to their country of origin as a result of waiving the settlement procedures	103 Parents¹⁰
14			
15			
16			
17			

18

19 **B. The President’s February 2, 2021 “Executive Order on the Establishment of Interagency Task Force on the Reunification of Families”**

20

21 On February 8, 2021, the Court ordered the parties to provide the Court with

22 their positions “on how the President’s February 2, 2021 ‘Executive Order on the

23 Establishment of Interagency Task Force on the Reunification of Families’ affects

24

25 ⁹ This number includes children granted asylum as a dependent on their parent’s asylum application.

26

27 ¹⁰ This number is as of January 6, 2021. Please note that 109 were reported in the last JSR, but six were subsequently identified as exclusions.

28

1 this case.” ECF No. 573. Defendants believe that the work of the Task Force will
2 resolve many—if not all—outstanding issues in this litigation, and Defendants look
3 forward to working with Plaintiffs with that goal in mind.
4

5 On February 22, 2021, the parties held a call to discuss the issue of
6 reunifications and the work of the Task Force. Defendants explained to Plaintiffs
7 that the Task Force is actively meeting and intends to consult with Plaintiffs and
8 other stakeholders who have been involved in the reunification process. A call
9 between the task force and Plaintiffs’ counsel was subsequently held on February
10 23, and Defendants will work with Plaintiffs’ counsel to arrange additional
11 discussions going forward as appropriate. The Task Force intends to use these
12 discussions to develop more comprehensive plans regarding how it will move
13 forward. Accordingly, Defendants ask the Court to allow them to file a further update
14 on the work of the Task Force and its likely effect on this litigation on or before
15 March 10, 2021. Plaintiffs have stated that they are in agreement with this proposal
16 for moving forward on this issue.
17
18
19
20

21 **C. Government Processes, Procedures, and Tracking, for Separations Since**
22 **June 26, 2018.**

23 Data Requested by Plaintiffs. Defendants continue to provide Plaintiffs
24 updated reports containing information regarding parents and children separated
25 since the Court’s June 26, 2018 Order on a monthly basis.
26
27
28

1 Processes and Procedures.

2 In the May 27, 2020 Joint Status Report, Defendants provided the court with
3 updated reporting regarding the various steps they have taken to implement
4 Paragraph 5 of the preliminary injunction, ECF No. 83 at 24, ¶ 5, and improve the
5 processes and procedures for information sharing between the agencies related to
6 family separations. Defendants have continued to update the Court on developments
7 regarding these processes, and have continued to address these issues with Plaintiffs
8 as appropriate.
9

10 Following the July 10, 2020 status conference, the Court ordered that
11
12 “Defendants shall provide a declaration from the Assistant Commissioner of OIT or
13 other appropriate designee setting out the status of the development of the UIP and
14 estimated completion date. The declarant should also address the Court’s concerns
15 about how the UIP will enable parents in criminal custody access to their children’s
16 location information and how the UIP will assist in reunification efforts when a
17 parent is transferred from criminal custody to immigration custody.” ECF No. 543
18 at 2. Defendants provided that information in the August 19, 2020, Joint Status
19 Report, including a declaration from Robert J. Costello, Executive Director, Office
20 of Information Technology, Enterprise Services, U.S. Customs and Border
21 Protection, U.S. Department of Homeland Security. ECF No. 547. On October 20,
22 2020, and December 2, 2020, at the request of the Court, Defendants provided
23
24
25
26
27
28

1 additional declarations from Mr. Costello on the progress of the UIP. ECF Nos. 556-
2 1, 560-1. The Court did not order a further update regarding the UIP this month, and
3 Defendants have not identified any significant issues that require a further update
4 from Mr. Costello at this time.
5

6 Defendants also are continuing their work to resolve what the Court has
7 described as “the information gap between the Department of Justice (Bureau of
8 Prisons and U.S. Marshal) [USMS] and the Department of Health and Human
9 Services (ORR).” ECF No. 558, ¶ 1. USMS and ORR continue to work together to
10 formalize the processes for information sharing between ORR and USMS. The
11 presumptive goal of the ongoing discussions between these two agencies—and
12 including other agencies as appropriate—will be to establish formalized notification
13 and information sharing procedures between USMS and ORR to ensure that
14 USMS—including all detention facilities housing these individuals—is made aware
15 that it may have a separated parent in its custody. Once so notified, USMS will
16 develop formalized procedures at each of its facilities that will allow parents to
17 communicate with their children in ORR custody. USMS and ORR will work
18 together to create a formalized process whereby the USMS will be able to arrange
19 regular calls between the parent and child taking into consideration the wishes of the
20 parent and child and the operational needs of the USMS and ORR facilities involved.
21
22
23
24
25
26
27
28

1 **II. MS. L. PLAINTIFFS' POSITION**

2 **A. Steering Committee Outreach to Sponsors and Parents of Children**
 3 **of Expanded Class Members**

4 The government has provided eleven lists identifying 1,134 children of
 5 expanded class members. The government has also identified 64 “recategorized”
 6 deported parents from the original class, who the Steering Committee has sought to
 7 contact as part of its efforts to reach members of the expanded class.¹¹ The Steering
 8 Committee’s recent efforts have been targeted at locating the parents of this group
 9 of 1,198 (1,134 plus 64) children.¹²

10 Of these 1,198 children, for 692 the Steering Committee has reached the
 11 parents (or their attorneys), or otherwise resolved the cases. This represents an
 12 increase of 105 children’s parents since our last status report. We describe below
 13 the status of our continuing efforts to reach the parents of the remaining 506 children,
 14 down from 611 in the last status report.

15 The parents of 506 children fall into three groups. First, there are
 16 approximately 322 children whose parents are believed to have been removed from
 17 the United States following separation from their children, and our efforts to locate
 18 them in their country of origin are ongoing. Second, there is a group of
 19 approximately 168 children whose parents are believed to be in the United States,
 20

21 ¹¹ In its portion of the December 12, 2018 Joint Status Report, the government disclosed the
 22 existence of what we call the “Recategorized Original Class”, *i.e.*, members of the original class
 23 who were not identified as part of the government’s initial disclosures in the summer of 2018. The
 24 government only provided contact information for this group in February 2019, after the Steering
 25 Committee’s efforts to contact original class members had concluded – and so, as a logistical
 26 matter, the Steering Committee has conducted outreach to the 64 parents in this group who were
 27 deported following separation from their children, as part of the Steering Committee’s efforts to
 28 contact *expanded* class members.

¹² Because some of the parents of these children entered with more than one child, there are 1,082
 parents in this combined group.

1 and efforts to locate them in the United States are also ongoing. Third, there is a
2 group of 16 children for whom the government has not provided a phone number for
3 the parent, child, sponsor or attorney. This group previously numbered 18.

4 **B. Steering Committee Efforts to Locate Parents**

5 First, as previously reported, the Steering Committee attempts to reach all
6 parents, sponsors and attorneys by telephone. The Steering Committee has renewed
7 these efforts and had been engaged in an effort to reach parents, where possible, by
8 using the additional contact information recently provided by the government from
9 databases of the Executive Office for Immigration Review and U.S. Customs and
10 Immigration Enforcement. This information includes phone numbers that had not
11 previously been disclosed for children and parents, as well as contact information
12 for a number of attorneys.

13 Where those efforts are not successful, the Steering Committee has engaged
14 in time-consuming and arduous on-the-ground searches for parents. These on-the-
15 ground searches have been focused abroad in the countries of origin of parents who
16 were removed from the United States following separation from their children.
17 These searches are ongoing by members of the Steering Committee, and we have
18 recently devoted additional resources to these efforts. As previously reported, on-
19 the-ground searches for separated parents are ongoing when it is safe to do so, but
20 are limited and in some cases cannot take place due to risks associated with the
21 COVID-19 pandemic.

22 Also, as previously reported, the Steering Committee has established toll-free
23 telephone numbers in the United States, Guatemala, Honduras, Mexico and El
24 Salvador to receive inbound phone calls from potential members of the expanded
25 class. The Steering Committee has distributed this number both by email and U.S.
26 Mail to a number of non-governmental organizations and other community
27 organizations in the United States, who may be able to help us locate parents because
28

1 they work in the communities these parents are likely to have contact with. In
2 addition, the Steering Committee sent letters in Spanish and English to
3 approximately 1,600 addresses provided by the government for the potential class
4 members that the Steering Committee has not yet reached. These letters explain our
5 role in this action and invite parents to contact the Steering Committee to call these
6 toll-free numbers. The Steering Committee continues to monitor voicemail boxes
7 reachable via these toll-free numbers, and plans to renew its mailing effort with the
8 new address information received for children and their attorneys from the
9 government.

10 Additionally, as previously reported, the Steering Committee has undertaken
11 broad-based media outreach efforts to publicize the toll-free phone numbers created
12 by the Steering Committee in Spanish language media. The Steering Committee has
13 also arranged for advertisements on Spanish language radio in Central America.
14 Those advertisements are set to air starting Thursday, February 25. The Steering
15 Committee continues to work to identify opportunities to broadly disseminate the
16 toll-free numbers through various media to maximize visibility to potential *Ms. L.*
17 class members, including most recently by seeking to collaborate on such media
18 outreach initiatives with other non-profit organizations.

19 The Steering Committee also receives additional contact information for a
20 limited number of families from third parties, including a number of non-
21 governmental organizations. The Steering Committee uses that information to re-
22 attempt telephonic communication with all families for whom new contact
23 information has become available, in addition to the efforts underway using new
24 information provided by the government as described above.

25 **C. Information Sharing**

26 The Parties continue to discuss issues with information-sharing and Plaintiffs
27 do not have further updates for the Court at this time. Plaintiffs note that it is not yet
28

1 clear to what extent, if any, the new interagency task force on the reunification of
2 families will address information sharing issues.

3 **D. Return of Additional Deported Parents**

4 The parties are discussing avenues for relief for deported parents, and will
5 continue to meet and confer, and report back to the Court.

6 **E. The Effect of the Executive Order on the Establishment of an**
7 **Interagency Task Force on the Reunification of Families**

8 The Court requested the input of the parties on how President Biden's creation
9 of an interagency task force on the reunification of families affects this case. ECF
10 573. Plaintiffs look forward to working with the newly formed Task Force but as of
11 now Plaintiffs are not aware of any specific actions the Task Force intends to take
12 and await further guidance from the administration.

13 **III. MMM-Dora Plaintiffs' Report Regarding Settlement Implementation**

14 The parties continue to work together to implement the Settlement Agreement
15 approved on November 15, 2018. Class counsel are providing the Government with
16 signed waiver forms as they are received from class members, and class counsel are
17 continuing to work on outreach efforts to class members who may qualify for relief
18 under the settlement. The parties continue to meet and confer on issues related to
19 settlement implementation as they arise. With respect to the Court's February 8,
20 2021 Order (ECF No. 573) asking that the parties include how the President's
21 February 2, 2021, Executive Order on the Establishment of Interagency Task Force
22 on the Reunification of Families affects this case, the MMM and Dora Plaintiffs are
23 able to continue their immediate and ongoing work to identify and notify potential
24 class members of the Settlement Agreement and their rights thereunder, but
25
26
27
28

1 Plaintiffs also regard the Executive Order as having the potential to lead to
2 recommendations for and the adoption of additional “immigration benefits” above
3 and beyond those required by the parties’ negotiated Settlement Agreement, which
4 may lead to changes in the parties’ implementation of the same.
5

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DATED: February 24, 2021

Respectfully submitted,

2
3 /s/ Lee Gelernt

Lee Gelernt*

Judy Rabinovitz*

Anand Balakrishnan*

4
5 AMERICAN CIVIL LIBERTIES UNION
6 FOUNDATION

125 Broad St., 18th Floor

New York, NY 10004

7
8 T: (212) 549-2660

9 F: (212) 549-2654

lgelernt@aclu.org

10 *jrabinovitz@aclu.org*

11 *abalakrishnan@aclu.org*

12 Bardis Vakili (SBN 247783)

13 ACLU FOUNDATION OF SAN DIEGO

& IMPERIAL COUNTIES

14 P.O. Box 87131

San Diego, CA 92138-7131

15 T: (619) 398-4485

16 F: (619) 232-0036

17 *bvakili@aclusandiego.org*

18 Stephen B. Kang (SBN 292280)

19 Spencer E. Amdur (SBN 320069)

AMERICAN CIVIL LIBERTIES UNION

20 FOUNDATION

39 Drumm Street

San Francisco, CA 94111

22 T: (415) 343-1198

23 F: (415) 395-0950

skang@aclu.org

24 *samdur@aclu.org*

25 *Attorneys for Petitioners-Plaintiffs*

26 **Admitted Pro Hac Vice*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BRIAN BOYNTON
Acting Assistant Attorney General
WILLIAM C. PEACHEY
Director
WILLIAM C. SILVIS
Assistant Director

/s/ Sarah B. Fabian
SARAH B. FABIAN
Senior Litigation Counsel
NICOLE N. MURLEY
Senior Litigation Counsel
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
(202) 532-4824
(202) 616-8962 (facsimile)
Sarah.B.Fabian@usdoj.gov

Attorneys for Respondents-Defendants